IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

Date of decision: 17.10.2006

State of Punjab Vs. Joginder Singh & others

CORAM: **Hon'ble Mr. Justice Virender Singh**
Hon'ble Mr. Justice A.N. Jindal

Present: Mr. M.S. Sidhu, Sr. Deputy Advocate General, Punjab, for the appellant.

None for the respondent.

Virender Singh, J.

Vide impugned judgment of learned Additional Sessions Patiala, dated 24.5.1999, all the seven respondents herein, namely, Joginder Singh, Mohinder Singh, Lakhbir Singh, Sukhbir Singh, Jarnail Singh, Balbir Singh and Hardev Singh (for short to be referred to as "the accused") have been acquitted of all the charges. Aggrieved by the same, State of Punjab has preferred the instant appeal which stands admitted way back in May, 2000.

It has been brought to our notice that the service of respondent No.1 (Joginder Singh son of Hazara Singh) has been effected whereas the other six accused have not been served upon till date. No one has put in appearance on behalf of served respondent-accused. Since it is an old appeal of the year 2000 and is already on the Board of this Court for final disposal, we do not want to detain ourselves any

further more and intend to dispose of the same today itself with the assistance rendered by Mr. M.S. Sidhu, learned Senior Deputy Advocate General, Punjab. He has also read out the statements of all the prosecution witnesses from the trial Court record as preparation of the paper-book has been exempted by the orders of Hon'ble the Acting Chief Justice.

Before we project the prosecution case, it would be worth mentioning here to note the charges framed qua each of the accused. All were charged under Section 148 IPC, Joginder Singh accused was charged under Section 302 IPC substantively, whereas the remaining accused were charged under Section 302/149 IPC, Hardev Singh and Jarnail Singh were charged under Section 325 IPC substantively whereas the remaining accused were charged under Section 325/149 IPC, Mohinder Singh and Joginder Singh were charged under Section 324 IPC substantively, whereas the other accused were charged under Section 324/149 IPC. There is an error in recording this charge in the charge sheet but the same has no effect on the merits of the case. Lakhbir Singh and Sukhbir Singh were charged under Section 323 IPC substantively, whereas the other accused were charged under Section 323/149 IPC.

The occurrence is of 6th of October, 1995 in which Nek Singh son of Babu Singh after receiving the injuries along with Gurmel Singh from the side of complainant, was got admitted in Rajindra Hospital, Patiala. A telephonic message was sent to Police Station Sadar, Patiala whereupon Assistant Sub Inspector Satnam Singh (PW11) along with

other police officials reached the hospital and obtained the MLR of aforesaid Nek Singh who according to the doctor was found fit to make a statement.

Nek Singh alleged that he was a labourer by profession and was Chowkidar of village Ashi Majra. He had gone to do his job in the fields situated in village Ucha Gaon. When he and Gurmel Singh were cutting the Wats of paddy field whereas Dalip Singh had gone to meet Pritam Singh son of Kirpal Singh, resident of Asse Majra who has his fields at some distance from there. At about 2.30 P.M. when they were taking tea, Joginder Singh son of Hazara Singh accused armed with Gandasa, his son Lakhbir Singh armed with Ghop, son Sukhbir Singh armed with Bala, another son Mohinder Singh armed with a Gandasi, Hardev Singh son of Sucha Singh armed with Bala and Jarnail Singh son of Santa Singh armed with a Sotti (stick), came there in a tractor trolly which was being driven by Balbir Singh alias Beera. They raised a Lalkara and said that they should not be permitted to go and would be taught a lesson for cutting the crop. Joginder Singh accused had allegedly given a Gandasa blow to Gurmel Singh which hit his forehead. He also gave three Gandasa blows to Gurmel Singh which hit him on his right head and the back side of the head. Lakhbir Singh also gave Ghop blow to Gurmel Singh on his right arm and other two blows on his right leg. Sukhbir Singh gave injury with Bala on the left leg of Gurmel Singh. Gurmel Singh was given more injuries by Sukhbir Singh. Consequently, he had fallen down on receipt of the injuries. Nek Singh raised an alarm

and thereafter Mohinder Singh son of Hazara Singh gave two Gandasi blows to Nek Singh which hit him on his forehead. Mohinder Singh caused more injuries to him on his left hand and right hand. Hardev Singh had also assaulted with the weapon he was having. Similarly Jarnail Singh also caused a stick. On his raising of an alarm, Dalip son of Jagat Singh and Pritam Singh son of Kirpal Singh also reached there and gave Lalkara whereupon all the accused left the spot.

The motive projected is that both the parties had a land dispute and on account of that the complainant side had been injured. Gurmel Singh had died at the spot whereas Nek Singh was removed to the hospital. The investigation was carried out by ASI Satnam Singh (PW11) and ultimately all the accused were challaned in this case. They were charged as stated above.

The prosecution in support of its case has examined Dr. G.S. Sharma (PW1) who had admitted Nek Singh on 6.10.1995 and discharged him on 16.10.1995.

Dr. O.P. Aggarwal (PW2) had conducted the postmortem examination on the dead-body of Gurmel Singh and found seven injuries on his person.

Dr. Raman Aggarwal (PW3) had proved the opinion vide which he had declared Nek Singh fit to make statement.

Pritam Singh (PW4) is the eye witness. He supported the case of the prosecution.

However, Nek Singh (PW5) supported the case of the prosecution in his examination-in-chief but during his cross-examination

he resiled from his version and stated that he was tutored by the police to make statement in the Court.

Dr. Sarabmeet Singh (PW6) had proved the injuries on the person of Nek Singh injured as he had medico-legally examined him.

MHC Sudh Singh (PW7) had tendered his affidavit Ex.PH in his evidence. His evidence is of a formal nature.

Bachna Singh (PW8) whose evidence was also of formal nature, had tendered his affidavit Ex.PJ.

Gobinder Singh (PW9) had proved the scaled plan Ex.PK.

Assistant Sub Inspector Devinder Singh (PW10) had in fact assisted Inspector Satnam Singh, the Investigating Officer of this case.

Inspector Satnam Singh (PW11) is the Investigating Officer of this case.

Om Parkash, Steno to Tehsildar Patiala (PW12) was a witness of formal nature, that too of record, who had proved Khasra Girdawari.

Indu Bala (PW13) had proved the registration certificate of the tractor allegedly used by the accused side.

Constable Chet Ram (PW14) and Amar Nath (PW15) were the witnesses of formal nature.

The plea taken up by the accused as emerges from the statements recorded under Section 313 Cr.P.C. is of false implication pleading that it was a case of blind murder by some unidentified persons. Joginder Singh accused specifically pleaded that he was in possession of

the land and litigation was going on between him and Dalip Singh who was father of the deceased Gurmel Singh and Dalip Singh falsely implicated him in this case.

The other accused also took the same pleas. In the defence, the accused side had tendered copies of the certain judgments of the Court.

After appreciating the entire evidence, the learned trial Court has acquitted all the seven accused.

We have heard Mr. Sidhu at length. He submits that the case of the prosecution is proved from the statement of injured Nek Singh Chowkidar who was declared fit to make the statement on the date of occurrence itself i.e. 6.10.1995. This witness has named all the accused. Specific part has been attributed to each of the accused. Strengthening his arguments Mr. Sidhu submits that the dispute was regarding the land which was pending in the court and there was motive for all the accused to commit the offence. They in furtherance of their common intention and armed with different weapons assaulted Nek Singh and Gurmel Singh (since deceased). Gurmel Singh died at the spot from where blood-stained earth was also taken into possession. Not only this, the statement of Pritam Singh (PW4) is also reliable as he corroborates the eye-version account unfolded by Nek Singh, the injured witness and, therefore, the evidence of these witnesses has not been properly appreciated by the learned trial Court. According to Mr. Sidhu, all the accused deserve to be convicted for the charges framed against each of them.

For arriving at the just conclusion of the case, the learned trial Court had framed the following points for determination:-

(i) Whether the evidence produced by the prosecution was sufficient to bring home the guilt of the accused?

(ii) Whether the defence version was plausible and sufficient to cause dent in the prosecution evidence ?

(iii) If the prosecution evidence is believed, what offence was committed by the accused persons?

What we have noticed from the impugned judgment is that for determining Point Nos.(i) and (ii) which were inter-connected, the learned trial Court has discussed the statement of Pritam Singh (PW4) and Nek Singh (PW5) in detail vis-a-vis the investigation conducted by ASI Satnam Singh.

The finding of the learned trial Court is that although presence of Nek Singh (PW5) could not be doubted as he was an injured person but his statement was not worthy of credence for the reason that in his cross-examination, he categorically stated that he was tutored by the police to make the statement in the Court. He stated that many a time the police had been tutoring him and that was the reason that he had mentioned the names of all the accused in his examination-in-chief. He did not identify any of the accused who had caused injuries to him. The learned trial Court while discarding the statement of aforesaid Nek Singh, relied upon a judgment of Hon'ble Apex Court rendered in ***Amar Singh Vs. The State of Punjab, (1987 (1) Recent Criminal Reports 389 (SC)*** wherein it was observed as under:-

> ' In this connection we may refer to the evidence of the second eye-witness PW6 Anokh Singh. In his examination-in-chief this witness sought to support the prosecution case, but in cross-examination he stated in clear and unequivocal term that he did not see Piara Singh deceased receiving any injury at the hands of the accused. No reliance, therefore, can be placed on the evidence of PW6.'

No doubt, it is well settled that the evidence of hostile witness does not completely wash away his entire evidence and some part of the evidence of a hostile witness which the Court find convincing in favour of the prosecution can be taken into account. But in our view, this approach cannot be adopted in each and every case. It depends upon the facts of an individual case. In the case in hand, the prosecution case is primarily hinging upon the evidence of Nek Singh, the star witness of the occurrence and, therefore, his evidence has to be of unimpeachable character before the conviction is maintained. In our view, his evidence is not worth reliance and the learned trial Court has rightly rejected it.

Even otherwise, the the evidence of other eye-witness Pritam Singh (PW4), who projected himself to be present in village at the time of the alleged occurrence, has been rightly discarded by the learned trial Court observing as under in para 24 of the impugned judgment:-

> " The next question is as to whether the statement of Pritam Singh (PW4) is acceptable evidence or not. On the

close scrutiny of his statement, I am of the opinion that his presence at the spot is highly doubtful and his conduct shows that he was not present at the spot and he has made the statement as a tutored witness. In the first instance his statement is liable to be rejected on the ground that he nowhere stated that he had already known the accused earlier and on that basis he could identify them. In his cross-examination he stated that village Jeon Majra was at a distance of 15/20 K.Ms from his village. He had never visited that village and he did not know any person of village Jeon Majra. He had not seen village Shahpur and he did not know at what distance it was situated from his village and he never went there nor he had seen any person of that village. He further stated that he had seen Ranjit Nagar, Patiala but he did not know any person of that Mohalla. Satnam Singh (PW11) who is the Investigating Officer in this case admitted in his cross-examination that two of the accused namely, Joginder Singh and Hardev Singh belong to Patiala and Balbir Singh belongs to Shahpur. He further stated that Jarnail Singh belongs to Reona Bholla and whereas Lakhbir Singh and Sukhbir Singh belong to Jeonpura. Two of the accused had their residences within the radius of 10 K.Ms and the others were having their

> residences within the area of 30 K.Ms. No identification was arranged in respect of the accused persons. When such are the circumstances it is highly doubtful and probable that Pritam Singh witness could identify the accused when he had not even met them earlier and he had never visited their villages. Thus, naming of the accused in his statement shows that he was a tutored witness. No reliance can be placed on the statement of such a witness."

We for arriving at the just conclusion of the case have once again re-scanned the evidence of aforesaid Nek Singh and Pritam Singh, the two eye-witnesses to the occurrence and concur with the findings arrived at by the learned trial Court in rejecting their testimony.

The investigation conducted in this case has also been dubbed as tainted one by the learned trial Court observing that Satnam Singh, Assistant Sub Inspector, was involved in a case registered against him under Prevention of Corruption Act at the instance of Hazara Singh, father of four of the accused, namely, Joginder Singh, Mohinder Singh, Lakhbir Singh and Sukhbir Singh. During the trial, the said case was pending against him as is clear from Ex.DG. The learned trial Court has also doubted the recovery of the clothes of the deceased as there was ambiguity in receiving the clothes and the date of conducting of the postmortem-examination. The learned trial Court has also found certain other material flaws in the case of the prosecution with regard to the

timing of the recording of the FIR and taking all the weaknesses collectively, came to a categoric finding that the investigation conducted in this case was faulty one. Benefit of doubt was accordingly extended to the accused on that count as well.

We are also of the view that the investigation conducted in this case is not upto the mark. But primarily we reject the case of the prosecution doubting the eye-version account.

Even otherwise, the scope of interference by the Appellate Court in the judgment of acquittal is very limited. While deciding an appeal against acquittal, the paramount consideration of the Court is to ensure that there is no perversity or unreasonableness in an order of acquittal warranting into miscarriage of justice.

In ***Ramesh Babulal Doshi vs. State of Gujarat (1996) 9 SCC 225,*** their Lordships observed as under:-

> "While sitting in judgment over an acquittal the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate Court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then

and then only reappraise the evidence to arrive at its own conclusions."

In another judgment rendered in ***State of Punjab Vs. Pohla Singh and anr. 2004 (1) RCR (Criminal) 5***, their Lordships of Hon'ble Apex Court held that golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing towards the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted.

In a very latest judgment of Apex Court rendered in ***Kallu @ Masih and others vs. State of Madhya Pradesh,*** 2006 (1) RCR (Criminal) 427, their Lordships while dealing with the scope of appellate Court in an appeal against acquittal observed as under:-

"While deciding an appeal against acquittal, the power of the Appellate Court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate court will also

> bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of doubt. Further if it decides to interfere, it should again assign reasons for differing with the decision of the trial court."

The crux of the aforesaid decisions, is that the judgment of acquittal can be interfered with only if the view taken by the trial Court is palpably wrong, perverse or unreasonable resulting into miscarriage of justice.

We after having re-scanned the entire evidence once again with the assistance of Mr. Sidhu, the learned State Counsel, are of the confirmed view that the impugned judgment does not suffer from any of the aforesaid flaws warranting our interference for taking a different view than the one already taken by the learned trial Court.

The net result is that the instant appeal filed by State of Punjab merits dismissal having no substance in it. Ordered accordingly.

(Virender Singh)
Judge

(A.N. Jindal),
Judge

October 17, 2006
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